

## **TENTATIVE RULINGS for CIVIL LAW and MOTION February 17, 2015**

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Two: (530) 406-6843

### **TENTATIVE RULING**

**Case:** **Costa v. Contreras**

**Case No. CV CV 14-745**

**Hearing Date:** **February 17, 2015** **Department Two** **9:00 a.m.**

Defendant the Romeo Berrettoni Trust's demurrer to the fifth cause of action for intentional infliction of emotional distress ("IIED") in plaintiffs Thomas Costa and Gwendolyn Costa's second amended complaint ("SAC") is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Pro., § 430.10, subd. (e).) Defendant's conduct, as alleged in plaintiffs' SAC, does not rise to the level of outrageous or extreme conduct as required for an IIED claim. (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 210; SAC, ¶¶ 1-92.)

Defendant's motion to strike paragraphs 47, 62, 76, and paragraph 5 of the prayer for damages in plaintiffs' SAC is **GRANTED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 435 et seq.) Defendant's conduct, as alleged in plaintiffs' SAC, does not support a finding of malice, oppression, or fraud to support a claim for punitive damages. (Civ. Code, § 3294; *Peterson v. Superior Court* (1982) 31 Cal.3d 147, 158-59; *Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 402; *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 31.)

Defendant's motion to strike paragraphs 4, 12, 14, 20-24, 31-32, 37-39, 49, 54-55, and 68, or portions thereof, is **DENIED**. The Court cannot determine, based on the face of the SAC, that the matters sought to be stricken are irrelevant or improper. (Code Civ. Proc., § 435 et seq.)

Based on the Court's ruling on defendant's demurrer, the Court need not reach defendant's motion to strike as it relates to the allegations contained in the fifth cause of action for IIED. (SAC, ¶¶ 83-92.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.

Defendants Raymond Webster-Contreras and Tony's Cocktails's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Defendants' demurrer to the fifth cause of action for intentional infliction of emotional distress ("IIED") in plaintiffs Thomas Costa and Gwendolyn Costa's second amended complaint ("SAC") is

**SUSTAINED WITHOUT LEAVE TO AMEND.** (Code Civ. Pro., § 430.10, subd. (e).)

Defendants' conduct, as alleged in plaintiffs' SAC, does not rise to the level of outrageous or extreme conduct as required for an IIED claim. (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 210; SAC, ¶¶ 1-92.) Having sustained the demurrer on this ground, the Court need not reach the other ground asserted for the demurrer.

Defendants' motion to strike paragraph 5 of the prayer for damages in plaintiffs' SAC is

**GRANTED WITHOUT LEAVE TO AMEND.** (Code Civ. Proc., § 435 et seq.) Defendants' conduct, as alleged in plaintiffs' SAC, does not support a finding of malice, oppression, or fraud to support a claim for punitive damages. (Civ. Code, § 3294; *Peterson v. Superior Court* (1982) 31 Cal.3d 147, 158-59; *Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 402; *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 31.)

Based on the Court's ruling on defendants' demurrer to the fifth cause of action for IIED, the Court need not reach defendants' motion to strike a portion of paragraph 92.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.